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OFFICE OF PETITIONS

In re Application of
Philippe Magnier
Filing Date: December 17, 2001
Application No. 09/937,362
International Filing Date:
March 17, 2000
Atty Docket No. 5310-03400

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: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
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This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT; AND, APPLICATION FOR PATENT TERM ADJUSTMENT," filed May 25, 2004. Applicant requests pursuant to 35 U.S.C. 154(b), a determination of patent term adjustment due to examination delay of 165 days.

The petition is **DISMISSED**.

On February 18, 2004, the Office mailed the Determination of Patent Term Extension under 35 U.S.C. 154(b) (application filed after June 7, 1995 but prior to May 29, 2000) in the above-identified application. The Notice stated that the patent term extension to date is 0 days.

The Patent Term Guarantee Act of 1999 amended 35 U.S.C. § 154 to include § 154(b), which provides for adjustment of patent term due to examination delay. The provisions of § 154(b) related to adjustment of patent term due to administrative delays apply only to original applications, other than designs, filed on or after May 29, 2000. The provisions do not apply to international application filed before May 29, 2000 by virtue of the requirements of 35 U.S.C. 371 having been met on or after May 29, 2000. The date on which an international application fulfills the requirements of 35 U.S.C. 371 is not the filing date, or even relevant to the filing date, of the international application. Section 4405 of the American Inventors Protection Act of 1999 provides that the amendments relating to patent term adjustment shall apply to any application filed on or after May 29, 2000, but does not provide that its patent term adjustment provisions apply to international applications filed before May 29, 2000, that complied with the requirements of 35 U.S.C. 371 on or after May 29, 2000. See Comment 6 to *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

Since the international filing date of this application, March 17, 2000, is before May 29, 2000, this application is not eligible for patent term adjustment due to examination delay.

Since this application did not have a successful appeal, interference or secrecy order delay, this application is not eligible for the extension or adjustment under 35 U.S.C. 154. The Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 50-1505, as authorized. No additional fees are required.

The Publishing Division has been advised of this decision. The application is being forwarded for timely issuance of the patent.

Telephone inquiries with regard to this communication should be directed to Senior Petitions Attorney Nancy Johnson at (703) 305-0309.

Karin A Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy